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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In the matter of:

MARTIN OCEGUERA and  
ALMA R. OCEGUERA

Debtors.

Case No: BK-09-27979-LBR  
Chapter 13

Date: 2-4-10  
Time: 2:30 p.m.  
Rick A. Yarnall

**MOTION TO VALUE DEBTORS' PRINCIPAL RESIDENCE AND AVOID WHOLLY  
UNSECURED LIEN(S) ENCUMBERING SAME, TO MODIFY THE RIGHTS OF  
LIENHOLDERS AND OBJECTION TO LIENHOLDERS'  
PROOF(S) OF CLAIM, IF ANY**

Come Now Debtors, Martin Oceguela and Alma R. Oceguela, by and through their legal counsel, David M. Crosby, Esq., of the law firm Crosby & Associates, who respectfully move this Court to value Debtors' principal residence, determine the second lien of Wells Fargo Bank, N.A., to be wholly unsecured, to avoid said wholly unsecured lien and to modify the rights of said creditors accordingly including determining the claims (pursuant to proof(s) of claim which such lienholder may file or have filed) to be unsecured where there is insufficient equity in the residence to secure more than the first lien.

This Motion is brought pursuant to 11 U.S.C. §502(a), §506(a), §1322(b)(2), and Bankruptcy Rules 3012 and 9014, the Points and Authorities set forth below and

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all documents and pleadings on file herein.

Dated this 29<sup>th</sup> day of December, 2009.

CROSBY & ASSOCIATES

By:

David M. Crosby, Esq.  
Attorney For Debtor(s)

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**POINTS AND AUTHORITIES**

**I.**

**STATEMENT OF FACTS**

1. Debtors filed a Chapter 13 petition in the United States Bankruptcy Court, District of Nevada on September 25, 2009.

2. On the date of the petition, Debtors were the owners of real property used as their principal residence known and described as 4709 Carmar Drive, Las Vegas, NV 89122 (Exhibit "1") legally described as follows:

Lot 288 in Block 6 of Gardens East-Phase 6 Sec 22 Twp 21  
Rng 62, as shown by map thereof on file in Book 75 of  
Plats, Page 54, in the Office of the County Recorder of  
Clark County, Nevada.

APN: 161-22-317-002

3. The value of said principal residence at the time their Chapter 13 Petition was filed was \$138,550.00 as set forth more particularly in an internet appraisal of subject property (Exhibit "2").

4. Said property at the time of filing was subject to the following liens allegedly evidenced by Promissory Notes and Deeds of Trust:

1 First Mortgage: (Exhibit "3")  
2 Wells Fargo Bank, N.A. \$ 228,667.79  
3 P. O. Box 14469 MACX2303-01A  
4 Des Moines, IA 50306-9655  
5 Loan # XXXXXX1652

6 Junior Mortgage: (Exhibit "4")  
7 Wells Fargo Bank, N.A. \$ 65,051.65  
8 P. O. Box 14469 MACX2303-01A  
9 Des Moines, IA 50306-9655  
10 Loan # XXXXXX2144

11 5. As of the date Debtors' Chapter 13 Petition was filed no equity existed in  
12 said property above the claim of the first mortgage holder identified above. The claim  
13 of the junior mortgage holder identified above was wholly unsecured on the date of the  
14 Petition and if said property were foreclosed or otherwise sold at auction on that date  
15 there would be insufficient proceeds to pay anything to Wells Fargo Bank, N.A. pursuant  
16 to its junior lien.

17 6. Debtors declare that the junior claim of Wells Fargo Bank, N.A. is  
18 unsecured and should be reclassified as unsecured to share pro rata with other general  
19 unsecured creditors through the debtors' Chapter 13 plan with any proofs of claim filed  
20 by it modified accordingly to document the claim as unsecured, and that the junior lien  
21 filed by Wells Fargo Bank, N.A. as identified above encumbering subject property be  
22 properly avoided by Order of this Court.

23 II.

24 LEGAL ARGUMENT

25 A. A Wholly Unsecured Lien Encumbering Debtor's Principal Residence May  
26 be Avoided Because Modification is Authorized/Not Prohibited by 11 U.S.C.  
27 § 1322(b)(2).

28 11 U.S.C. §1322(b)(2) provides in pertinent part:

(b) Subject to subsections (a) and © of this section, the plan  
may—

\*\*\*\*\*

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest that is secured by an interest in real property that is the debtor's principal residence, .....

The junior claim by Wells Fargo Bank, N.A. identified above has no security in Debtors' residence based on the fair market value of the property and as a result is not a "secured claim" as defined and therefore not restricted by this section.

**B. The Claim by Lienholder May be Bifurcated into Secured and Unsecured Claims Pursuant to 11 U.S.C. §506(a).**

11 U.S.C. § 506(a)(1) provides in pertinent part:

(a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition

In re Zimmer, 313 F.3d 1220, 1221 (9th Cir.2002), accepted what was the majority view in the various circuits, that a, wholly unsecured lienholder is not entitled to the protection of 11 U.S.C. §1322(b)(2). The Court stated that a wholly unsecured lienholder's claim can be modified and reclassified as a general unsecured claim pursuant to 11 U.S.C. §506(a), despite the anti-modification language in §1322(b)(2).

**C. Any Proof of Claim Filed by Named Lienholders Should be Conformed by Order of This Court to any Modification of Their Rights Determined by This Court.**

11 U.S.C. § 502 provides that a claim of interest represented by proper Proof of Claim filed pursuant to section 501 is deemed allowed unless objected to. Debtors herewith have objected to any and all Proofs of Claim which may have been filed by Wells Fargo Bank, N.A. pursuant to its junior lien and request that any Proof(s) of Claim

1 of same representing such claims be modified accordingly to unsecured claims  
2 consistent with the Order of this Court determining CitiMortgage, Inc.'s junior claim to  
3 be wholly unsecured.

4 **III.**

5 **CONCLUSION**

6 Debtors respectfully request determination of value of Debtors' primary  
7 residence to be less than the amount of the first lien and argue that since the junior  
8 claim of Wells Fargo Bank, N.A. is wholly unsecured it may be avoided and "stripped off"  
9 pursuant to 11 U.S.C. §1322(b)(2) and §506(a); that the said junior claim of Wells Fargo  
10 Bank, N.A. be reclassified as general unsecured claims to be paid pro rata with other  
11 general unsecured creditors through the debtors Chapter 13 plan and that any Proofs  
12 of Claim of the lienholders be modified accordingly.

13 WHEREFORE, Debtors pray that this Court:

14 1. Determine the value of Debtors' principal residence to be \$ 138,550.00 or  
15 such other amount as may be less than the balance of the first lienholder as of the date  
16 of the Petition; and

17 2. Avoid and extinguish Wells Fargo Bank, N.A.'s junior lien pursuant to 11  
18 U.S.C. Section 506(a) upon completion of the Debtors' Chapter 13 plan; and

19 3. Reclassify the junior claim of Wells Fargo Bank, N.A. as general  
20 unsecured claim to be paid pro rata with other general unsecured creditors through the  
21 Debtors' Chapter 13 plan.

22 4. Conform any Proofs of Claims filed by Wells Fargo Bank, N.A. pursuant  
23 to its junior lien to the unsecured status of said claim as determined by this Court.

24 ///

25 ///

26 ///

5. Order such other relief as the Court may deem appropriate.

Dated this 29<sup>th</sup> day of December, 2009.

Respectfully Submitted:

CROSBY & ASSOCIATES

By:

David M. Crosby, Esq.  
Attorney for Debtor

GENERAL INFORMATION	
<b>PARCEL NO.</b>	161-22-317-002
<b>OWNER AND MAILING ADDRESS</b>	OCEGUERA MARTIN VILLARREAL-OCEGUERA ALMA ROSA 4709 CARMAR DR LAS VEGAS NV 89122-7590
<b>LOCATION ADDRESS CITY/UNINCORPORATED TOWN</b>	4709 CARMAR DR WHITNEY
<b>ASSESSOR DESCRIPTION</b>	GARDENS EAST-PHASE 6 PLAT BOOK 75 PAGE 54 LOT 288 BLOCK 6  SEC 22 TWP 21 RNG 62
<b>RECORDED DOCUMENT NO.</b>	* 19970818:01064
<b>RECORDED DATE</b>	08/18/1997
<b>VESTING</b>	JOINT TENANCY

\*Note: Only documents from September 15, 1999 through present are available for viewing.

ASSESSMENT INFORMATION AND SUPPLEMENTAL VALUE	
<b>TAX DISTRICT</b>	570
<b>APPRAISAL YEAR</b>	2009
<b>FISCAL YEAR</b>	09-10
<b>SUPPLEMENTAL IMPROVEMENT VALUE</b>	0
<b>SUPPLEMENTAL IMPROVEMENT ACCOUNT NUMBER</b>	N/A

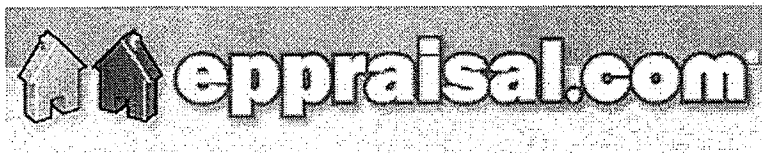
REAL PROPERTY ASSESSED VALUE		
<b>FISCAL YEAR</b>	2009-10	2010-11
<b>LAND</b>	4410	7000
<b>IMPROVEMENTS</b>	45136	34838
<b>PERSONAL PROPERTY</b>	0	0
<b>EXEMPT</b>	0	0
<b>GROSS ASSESSED (SUBTOTAL)</b>	49546	41838
<b>TAXABLE LAND+IMP (SUBTOTAL)</b>	141560	119537
<b>COMMON ELEMENT ALLOCATION ASSD</b>	118	125
<b>TOTAL ASSESSED VALUE</b>	49664	41963
<b>TOTAL TAXABLE VALUE</b>	141897	119894

ESTIMATED LOT SIZE AND APPRAISAL INFORMATION	
<b>ESTIMATED SIZE</b>	0.18 Acres
<b>ORIGINAL CONST. YEAR</b>	1997
<b>LAST SALE PRICE MONTH/YEAR</b>	0
<b>LAND USE</b>	1-10 RESIDENTIAL SINGLE FAMILY
<b>DWELLING UNITS</b>	1

PRIMARY RESIDENTIAL STRUCTURE					
<b>TOTAL LIVING SQ. FT.</b>	1777	<b>CARPORT SQ. FT.</b>	0	<b>ADDN/CONV</b>	NONE
<b>1ST FLOOR SQ. FT.</b>	1777	<b>STORIES</b>	ONE STORY	<b>POOL</b>	NO
<b>2ND FLOOR SQ. FT.</b>	0	<b>BEDROOMS</b>	3	<b>SPA</b>	NO
<b>BASEMENT SQ. FT.</b>	0	<b>BATHROOMS</b>	2 FULL	<b>TYPE OF CONSTRUCTION</b>	FRAME STUCCO
<b>GARAGE SQ. FT.</b>	484	<b>FIREPLACE</b>	0	<b>ROOF TYPE</b>	CONCRETE TILE

**EXHIBIT**





Street Address

Home Values

Local Info

Find a Pro

4709 Carmar Dr Las Vegas, NV 89122

Home Details | Recently Sold Homes | Similar Homes for Sale | Home Values | Schools



### Estimated Home Values:

**\$138,550** ©

Low \$117,767 - High \$159,332

**\$184,000**

**\$137,865**

**Get a detailed analysis report**

Help

Add to favorites

Find a Pro

Get updates via Twitter

## Home Details

Public Record ©

User Edits (Login or Register to edit.) ©

Bedrooms: 3

Bedrooms: N/A

Bathrooms: 2.00

Bathrooms: N/A

Square Footage: 1777

Square Footage: N/A

Year Built: 1997

Year Built: N/A

Home Details

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**EXHIBIT** *27*



## Home Appraisal Las Vegas

Real Estate, Jumbo & SFR appraisals Condo Townhome & Raw Land  
Appraisal

Ads by Google

(702)

Visit I

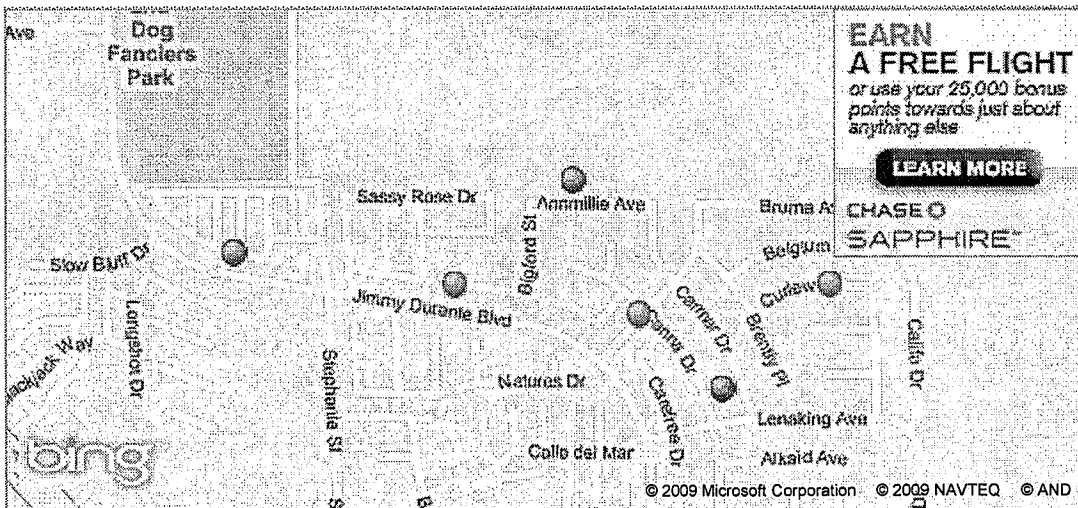
Recently Sold Homes

Similar Homes for Sale

### Recently Sold Homes

Address	Sales Price	Sale Date	Bed/Bath	Sq. Ft.
5739 Bolton Valley Dr Las Vegas, NV 89122	\$98,000	9/25/2009	3/3	1604
6032 Annmillie Ave Las Vegas, NV 89122	\$152,500	7/2/2009	3/2	1777
5915 Ablette Ave Las Vegas, NV 89122	\$160,000	8/20/2009	3/2	1777
4611 Belcolla Ln Las Vegas, NV 89122	\$149,900	9/29/2009	3/2	1777
6291 Curlew Dr Las Vegas, NV 89122	\$140,000	9/23/2009	3/2	1777

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Recent Sales

### Las Vegas, NV Home Values

Home Value Trending ☒ What's This

- ☒ Local
- ☐ State
- ☐ National





PMA account 5052058749 ■ September 1, 2009 - September 30, 2009 ■ Page 5 of 6

## Home Mortgage

### Property address

4709 Carmar Drive  
Las Vegas, NV 89122

Account number: 708-0140261652

ALMA R VILLARREAL-OCEGU  
MARTIN OCEGUERA

Wells Fargo Home Mortgage

### Loan summary

Original date of mortgage	10/4/04
Interest rate	6.625%
Unpaid principal balance* as of 9/30	\$228,667.79
Current monthly payment	\$1,568.77
Escrow balance	\$0.00
Interest paid year-to-date	\$11,436.52
Taxes paid year-to-date	\$0.00

\*Contact Customer Service for your payoff balance.

- This is a summary statement of your Home Mortgage account. You will continue to receive a complete periodic statement.

EXHIBIT 3

B10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEVADA		PROOF OF CLAIM
Name of Debtor: MARTIN OCEGUERA		Case Number: 0927979
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Wells Fargo Bank, N.A.		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____
Name and address where notices should be sent: Wells Fargo Bank, N.A. P. O. Box 14469 MAC X2303-01A Des Moines, IA 50306-9655  Telephone number: 1-800-241-0039		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
Name and address where payment should be sent (if different from above): Wells Fargo Operations Center P.O. Box 31557 MAC B6955-01B Billings, MT 59107  Telephone number: 1-800-241-0039		
1. Amount of Claim as of Date Case Filed: \$65,051.65  If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507 (a)(4).  <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507 (a)(5).  <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507 (a)(7).  <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507 (a)(8).  <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)( ).  Amount entitled to priority:  \$ _____
2. Basis for Claim: <b>Money Loaned</b> (See instruction #2 on reverse side.)		*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
3. Last four digits of any number by which creditor identifies debtor: 172462144.  3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: 4709 CARMAR DR LAS VEGAS, NV 89122  Value of Property: \$140,000.00 (estimated) Annual Interest Rate 11.375%  Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$0.00 Basis for perfection: Mortgage/Deed of Trust  Amount of Secured Claim: \$65,051.65* Amount Unsecured: \$		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.  7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain:		
Date: 10/23/2009  Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  /s/ Cristy Bidler Bankruptcy Representative		FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

\* or as allowed under Section 506

EXHIBIT 4

**EQUITY CLAIMS WORKSHEET**

Case Name: MARTIN OCEGUERA Case Number: 0927979  
ALMA R OCEGUERA

**Instructions:**

1. Attach worksheet to the Official Proof of Claim Form B10.
2. Compute the claim as of the date on which the Debtor filed the petition. DO NOT include interest or charges that accrue after the petition date in the computation of the debt. (A claim that accrues interest after the petition date for payments on a secured debt not made when due after the petition date should be presented in a separate proof of claim dealing only with post-petition claims.)
3. Provide the requested information in the blanks below. Principal Balance and Accrued Interest MUST NOT include unearned interest. The completion and filing of this form does not prejudice a creditor's right to contest whether the creditor's interest in the property is adequately protected by payments made post-petition.

A	Principal Due as of Petition Date	\$0.00
B	Interest Billed as of Petition Date	\$0.00
C	Late Charges as of Petition Date	\$0.00
D	Collateral Protection Insurance/ Insurance	\$0.00
E	Overlimit Amount	\$0.00
F	Other Charges	\$0.00
G	Total Amount of Arrearage (Sum of A-F)	\$0.00
H	Post Petition Principal Balance	\$65,000.00
I	Interest Accrued, Not Billed	\$51.65
J	Total Claim as of Petition Date (Sum of G-I)	\$65,051.65
K	Monthly Payment Amount	Variable**
L	Number of Installments past due as of Petition Date	0
M	Contractual Annual Interest Rate (APR)	11.375%
N	Value of Collateral	\$140,000.00

\* If Claim includes interest or other charges in addition to the principal amount of Claim, attach an itemized statement of interest or charges.

\*\*Loan has a temporary modification until 02/15/2013 with a variable and interest rate of 1.00%. After the modification expires loan may return back to original terms. Attached is a copy of the temporary modification agreement.

**Note:** Interest will continue to accrue on the unpaid principal balance ONLY.

Exhibit A